



State of California – Natural Resources Agency  
 DEPARTMENT OF FISH AND WILDLIFE  
 Bay Delta Region  
 2825 Cordelia Road, Suite 100  
 Fairfield, CA 94534  
 (707) 428-2002  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



Governor's Office of Planning & Research

July 12, 2021

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## STATE CLEARINGHOUSE

Mr. Martin Berber  
 Wagner & Bonsignore  
 2151 River Plaza Drive Suite 100  
 Sacramento, CA 95833  
[mberber@wbecorp.com](mailto:mberber@wbecorp.com)

Subject: North Mokelumne River Multi-Benefit Project, SCH No. 2021060346, Initial Study/Mitigated Negative Declaration San Joaquin County

Dear Mr. Berber:

The California Department of Fish and Wildlife (CDFW) received an Initial Study/Mitigated Negative Declaration (IS/MND) from Reclamation District 38 for the North Mokelumne River Multi-Benefit Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

### CDFW ROLE

CDFW is California's **Trustee Agency** for fish and wildlife resources, and holds those resources in trust by statute for all the people of the State. [Fish and Game Code, §§ 711.7, subd. (a) and 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)]. CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802). Similarly for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As

<sup>1</sup> CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish and Game Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish and Game Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

## **PROJECT DESCRIPTION SUMMARY**

**Proponent:** Reclamation District 38

**Objective:** The objective of the Project is to rehabilitate levee section from Station 1040+00 to 1200+00 to the Delta Specific PL 84-99 Standard and construct 7 riparian benches.

**Location:** Along the North Mokelumne River, Staten Island, San Joaquin County

**Timeframe:** Approximately Summer 2021 to Fall 2023

## **COMMENTS AND RECOMMENDATIONS**

CDFW offers the comments and recommendations below to assist Reclamation District 38 in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document. Based on the Project's avoidance of significant impacts on biological resources with implementation of mitigation measures, CDFW concludes that an MND is appropriate for the Project.

### **Comment 1:** Section 1.4.3 Mitigation

The IS/MND states the Project will be self-mitigating due to lack of existing habitat on the existing levee waterside slope. Because work will be conducted on both the waterside and landside of the levee, CDFW recommends including evaluations of potential impacts to both waterside and landside habitat. Any Assembly Bill 360 habitat permanently impacted would require mitigation.

### **Comment 2:** Section 1.5 Conservation Measures Bullet BIO-8. Giant Garter Snake Avoidance

Revisions are needed to mitigate impacts to giant garter snake (*Thamnophis gigas*) to less-than-significant if a lapse in Project activities occurs. CDFW recommends the IS/MND be revised to include the addition of the following measure:

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- *If a lapse in Project activity of two weeks or greater occurs, surveys for giant garter snake in the Project area shall be repeated.*

Additionally, if a giant garter snake is found during surveys or Project activities, CDFW and the U.S. Fish and Wildlife Service shall be consulted regarding the appropriate avoidance/mitigation measures prior to Project activities commencing.

**Comment 3:** Section 1.5 Conservation Measures Bullet BIO-9. Nesting Bird Avoidance

Revisions are needed to mitigate impacts to nesting birds to less-than-significant. CDFW recommends the IS/MND be revised to include the addition of the following nesting bird assessment and avoidance measures:

- *If construction occurs between February 15 and September 15, a qualified biologist shall conduct a habitat assessment and nesting survey for nesting bird species no more than five days prior to the initiation of work.*
- *Surveys shall encompass all potential habitats (e.g., grasslands and tree cavities) within 250 feet of the Project site.*
- *Surveys shall be conducted during periods of peak activity (early morning, dusk) and shall be of sufficient duration to observe movement patterns. Survey results, including a description of timing, duration and methods used, shall be submitted to CDFW for review forty-eight hours prior to the initiation of the Project.*
- *If a lapse in Project activity of seven days or more occurs, the survey shall be repeated and no work shall proceed until the results have been submitted to CDFW.*
- *If nesting birds are found, then no work shall be initiated until species-specific buffers have been established in consultation with CDFW.*
- *Active nests found inside the limits of species-specific buffer zones or nests within the vicinity of the Project site showing signs of distress from Project activity as determined by the qualified biologist shall be monitored daily during the duration of the Project for changes in bird behavior. Buffer areas of active nests within the vicinity of the Project site showing signs of distress or disruptions to nesting behaviors from Project activity, as determined by the qualified biologist, shall have their buffers immediately adjusted by the qualified biologist until no further interruptions to breeding behavior are detectable.*

**Comment 4:** Section 1.5 Conservation Measures Bullet BIO-10. Burrowing Owl Avoidance

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Conservation Measure BIO-10 states “Prior to any construction, regardless of season, a qualified biologist will conduct Take Avoidance Survey in accordance with the applicable portions of Appendix D of the CDFW *Staff Report on Burrowing Owl Mitigation* guidelines (7 March 2012).” Conservation Measure BIO-10 continues with survey measures that do not adhere to these guidelines. CDFW recommends the IS/MND be revised to adhere to Take Avoidance Survey methodology outlined in the CDFW *Staff Report on Burrowing Owl*.

Additionally, CDFW recommends Conservation Measure BIO-10 be revised to include adherence to the mitigation strategies defined in the CDFW Staff Report on Burrowing Owl Mitigation (2012). Passive exclusion of burrowing owls (*Athene cunicularia*) using one-way doors is not necessarily adequate to reduce impacts to less-than-significant. Mitigation may be required if the Project site is considered occupied by burrowing owls and passive exclusion is deemed necessary.

**Comment 5:** Section 1.5 Conservation Measures Bullet BIO-11. Swainson’s Hawk Avoidance

Conservation Measure BIO-11 states “...a qualified biologist shall conduct a preconstruction survey for Swainson’s hawk in accordance with the applicable sections of the *Recommended Timing and Methodology for Swainson’s Hawk Nesting Surveys in California’s Central Valley* (Swainson’s Hawk TAC 2000).” Mitigation Measure BIO-11 continues with survey measures that do not adhere to these guidelines. CDFW recommends the IS/MND be revised to include a survey area of 0.5-mile radius around the Project site in order to adhere to the document’s guidelines. In addition, CDFW recommends nest buffers of 0.5-mile from any active Swainson’s hawk (*Buteo swainsoni*) nest. Any reduction in buffers should be done only after consultation with CDFW which may require additional minimization and mitigation measures.

**Comment 6:** Conservation Measure needed to mitigate impacts to raptors to less-than-significant

CDFW recommends the IS/MND be revised to include the addition of the following nesting raptor assessment and avoidance measures:

- *If construction occurs between February 15 and August 15, a focused survey for active raptor nests shall be conducted within 0.25 mile of the Project site by a qualified biologist within 15 days prior to the beginning of project-related activities.*
- *If active nests are found, a 0.25-mile initial temporary nest disturbance buffer shall be established. If Project-related activities within the temporary nest disturbance buffer are determined to be necessary during the nesting season, an on-site biologist experienced with raptor behavior shall monitor the nest and*

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*consult with CDFW to determine the best course of action necessary to avoid nest abandonment or take of individuals.*

- *The on-site biologist shall be on the work site daily while construction-related activities are taking place with the 0.25-mile buffer and shall have the authority to stop work if raptors are exhibiting agitated behavior.*
- *Based on the behavior observed, in consultation with CDFW, the buffer may be reduced if the raptors are tolerant of construction activities.*
- *If a lapse in Project-related activities of two weeks or longer occurs, another focused survey shall be conducted.*

**Comment 7:** Section 3.4 Biological Resources Item i) Plants

The IS/MND lacks defined survey protocols for floristic surveys and states that botanical surveys were conducted in May and November 2020. To correct this, CDFW recommends adding a conservation measure for special-status plant species and that botanical surveys for special-status plants are performed in adherence to CDFW's *Protocols for Surveying and Evaluating Impacts to Special-Status Native Plant Populations and Natural Communities* (2018). This protocol, which is intended to maximize detectability, includes identification of reference populations to facilitate the likelihood of field investigations occurring during the appropriate floristic period. Special-status plant surveys should be performed by a qualified botanist and reporting requirements should be followed according to the protocols.

**Comment 8:** Conservation Measure needed to mitigate impacts to special-status plants to less-than-significant

The IS/MND does not reduce impacts to a level of less-than-significant by identifying compensatory mitigation in the event impacts to special-status plants cannot be fully avoided, or requiring CESA compliance through take authorization in the event CESA-listed plants species will be impacted by Project activities. CDFW recommends adding a conservation measure to require compensatory mitigation for impacts to special-status plant species at a minimum of 3:1 mitigation ratio for permanent impacts. CDFW also recommends inclusion of language defining the Project's obligation to obtain CESA-listed plant take coverage through an Incidental Take Permit (ITP) issued by CDFW when take of Rare, Threatened, or Endangered plants cannot be fully avoided.

**ENVIRONMENTAL DATA**

CEQA requires that information developed in draft environmental impact reports and negative declarations be incorporated into a data base which may be used to make subsequent or supplemental environmental determinations. [Pub. Resources Code, §

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21003, subd. (e)]. Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form, online field survey form, and contact information for CNDDDB staff can be found at the following link: <https://wildlife.ca.gov/data/CNDDDB/submitting-data>. The types of information reported to CNDDDB can be found at the following link: <https://wildlife.ca.gov/Data/CNDDDB/Plants-and-Animals>.

## ENVIRONMENTAL DOCUMENT FILING FEES

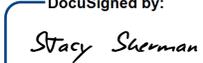
The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish and Game Code, § 711.4; Pub. Resources Code, § 21089).

## CONCLUSION

CDFW appreciates the opportunity to comment on the MND to assist Reclamation District 38 in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Ms. Brianne O'Rourke, Senior Environmental Scientist (Specialist), at (209) 234-3456 or [brianne.orourke@wildlife.ca.gov](mailto:brianne.orourke@wildlife.ca.gov); or Mr. Todd Gardner, Senior Environmental Scientist (Supervisory), at (209) 234-3441 or [todd.gardner@wildlife.ca.gov](mailto:todd.gardner@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
692D024B81CA4E7  
Stacy Sherman  
Acting Regional Manager  
Bay Delta Region

cc: Office of Planning and Research, State Clearinghouse, Sacramento